

United States District Court  
Southern District of New York

Case No. 18-cv-0993-RA-HBP

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Annamarie Trombetta

Plaintiff  
vs.

Norb Novocin, Marie Novocin  
and Estate Auctions Inc.  
and

William Seippel & WorthPoint Corporation  
5 Concourse Parkway NE, Suite 2850  
Atlanta, Georgia 30328

Defendants

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**PLAINTIFF'S MOTION FOR LEAVE TO FILE  
A PROPOSED AMENDED COMPLAINT FOR  
FRAUD, EMOTIONAL DISTRESS, TORT AND  
PERMANENT INJUNCTIVE RELIEF AGAINST  
EAI AND NORB AND MARIE NOVICIN AND  
WORTH POINT CORPORATION DUE TO THE  
WILLFUL CONCEALMENT AND FALSIFICATION  
OF FACTS AND FALSE ADVERTISING**

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE  
TO FILE A PROPOSED AMENDED COMPLAINT TO INCLUDE  
FRAUD,, FALSE ADVERTISING EMOTIONAL DISTRESS AND A  
REQUEST FOR DECLARATORY, PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF**

**FIRST DEFENDANTS ONLY : ESTATE AUCTIONS INC.  
NORB AND MARIE NOVOCIN  
PROPOSED AMENDED COMPLAINT**

Pursuant to Rule 15, Rule 15 (a) (2), Rule 15 (c) (1) (a), Rule 15 (d) and Rule 26.01 of the Federal Rules of Civil Procedure and this Court, Plaintiff hereby respectfully submits this Memorandum in Support of Plaintiff's Motion for Leave to File a Proposed Amended Complaint to add Fed. Rule of Civil Procedure Fraud 9 (b) and for the Plaintiff's Request for Permanent Injunction and Other Equitable Relief ("Amended Complaint"). Rule 15(c)(1) indicates that an amendment to a complaint will relate back to the date of the original pleading if certain conditions are satisfied. First, the law that provides the applicable statute of limitations must allow the relation back. Fed. R. Civ. P. 15(c)(1)(A).

**INTRODUCTION**

The Defendants, Estate Auctions Inc. have consistently purported confusing, illogical, multiple versions and obscured responses to Plaintiff's very simple and direct questions. Based on past

events and obvious false statements, spelling errors within the ad and in the red signature on the back of the 1972 Original Oil Painting and the recent production of three different, sales receipts for one eBay sale for the 1972 Original Oil Painting; Plaintiff set forth my Proposed Amendment Complaint to address these flagrant falsities. The additional Discovery responses and information in the Defendants' own filings exhibit such "bad faith," to the extent of willful, conscious intent, the actions necessitate a claim for Fraud and Tort. Plaintiff's claim for Fraud, also substantiates Plaintiff's initial Request for Declaratory Relief, as I am not the artist who created or signed the 1972 oil painting. The willful concealment, failure to produce any computer data, or any of the original 12 photos written and described in the as for the 1972 internet listing for the oil painting, conjoined with the delayed production of the misspelled red signature similar to my name; calls for the Plaintiff to request Permanent Injunction Relief to prevent any further false assertions from both Defendants. My Proposed Amended Complaint intends to illustrate contradictory EAI written and verbal statements, revealing fraudulent conduct, beginning from my first encounter with EAI Defendants Marie and Norb Novocin spanning through to EAI's the most recent production of three separate eBay receipts with distinct alterations, produced at different times.

Plaintiff's Proposed Amended Complaint is in tandem with Judge Cave's most recent Order in Doc. 308. The language of Rule 15 (a) (2) states the amendment should be freely allowed "when justice so requires." Further, Rule 26.01 states that an amendment may be allowed "at any stage of an action and may permit parties to sought to amend their pleadings just before trial. Also, Rule 26 .01 gives the court's permission if the amendments are substantive— and support laws that creates or defines rights, duties, obligations, and causes of action that can be enforced by law. Additionally "under New York law" a claim for Intentional Infliction of Emotional Distress (IIED) requires a showing of: (i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress.'" *Rich v. Fox News Network, LLC*, 939 F.3d 112 (2d Cir. 2019) (quoting *Howell v. N.Y. Post Co., Inc.*, 596 N.Y.S.2d 350, 353 (N.Y. 1993)). As the Second Circuit has explained: Under

New York law, although the standard of outrageous conduct is strict, rigorous and difficult to satisfy, that is not the case when there is a deliberate and malicious campaign of harassment or intimidation. Plaintiff's claim of Tort, both intentional and negligent necessitates the Discovery Rule, a rule in tort law which sets the statute of limitations for a cause of action not to begin to run until the time that the injured party discovers or reasonably should have discovered the injury. Plaintiff claims for pain and suffering have spanned seven and half years.

Plaintiff seeks to amend my complaint for reasons defined within my submission below for well warranted, obvious and justified claims to include Fraud, Tort and IIED. The willful denial by the EAI Defendants conjoined with their reluctance to resolve this case when I produced to all Defendants irrefutable evidence and that I am not the artist, has resulted in a severe loss of time, the inability of Plaintiff to earn a living due to the submissions required in litigating this case and delay any rectification or resolution regarding a counterfeit painting bearing a near similar name to the Plaintiff. This steadfast, willful reluctance, denial and/or prolonged production of Discovery are simultaneously consistent with emails sent from both attorneys who have both referenced the 505 Copyright Act for attorneys fees the Plaintiff will incur at the end of this case. Again, I did not paint in oils at age nine. I did not paint or sign the 1972 oil painting, which I consistently conveyed, evidenced in phone recording in writing and before I filed a lawsuit and now produced within litigation. Discovery and deposition responses by the Novocins have uncovered and documented a conscious willful attempt to abscond Plaintiff's identity and reputation to falsely associate the 1972 oil painting with my true self authored biography. The willful attempts by all the Defendants, who requested Plaintiff to produce Settlement Letters was then rejected as was most recently on Nov. 23, 2022. This "entraps" the Plaintiff in continuous litigation, when I duly informed both parties and produced irrefutable evidence to substantiate all my claims. This full year that is almost at its conclusion, has resulted in a continuous sustained, emotionally stressful set of circumstances, usurping Plaintiff's well being and causing loss of time while concurrently burdening the Plaintiff and the Court with e forced legal responsibilities to include the production of letters and documents by myself and my witnesses. All this work has derailed and

prevented the Plaintiff from actively painting as pursuing my career. Since this case began in good faith and with integrity has consistently submitted responses and evidence to the unpredictable, excessive demands by both Defendants, which totals over nine hundred documents.

Granting the Proposed Amendment Complaint would not be futile because the Second Amended Complaint (“SAC”), just like the First Amended Complaint (“FAC”), contains detailed factual allegations supporting each of Plaintiff’s claims. Each claim has a correlating exhibit of evidence in support to verify the Plaintiff’s claim. There will be no futility resulting in examining the Plaintiffs’ new claims, as these claims arise from the Defendants’ willful intent to misrepresent Plaintiff’s integrity and to willfully intend to misrepresent, to the Plaintiff, evidence, conduct and practices that Defendants have admittedly engaged. Based on the simple, plain reading of the evidence, all will assist in facilitating Plaintiff’s claims confirmed by truthful facts substantiated in and by evidence produced to the Defendants and by the Defendants.

## **JURISDICTION AND VENUE**

The Court has subject matter jurisdiction pursuant to Rule 15 of the Federal Rules of Civil Procedure. FRCV Rule 15 provides that “a party may amend its pleading [with] the court’s leave” and that “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). This Court has supplemental jurisdiction over the New York State law claims pursuant to 28 U.S.C. § 1367.

### **Legal Standards of F.R.C.R Fraud 9 (b) To Amend Plaintiff’s Complaint**

Plaintiff’s moves the Court to include fraud against each Defendant due to the constant, willful, conscious misbehavior with the knowledge that Defendants have purported false and misleading information to the Plaintiff, about the Plaintiff and in reference to the “1972 Original Oil Painting Ad Man With Red Umbrella”, to the general public at large and at present, to the Court in the public filings of this case. All the Defendants, EAI and WorthPoint Corp. demonstrated by concealment of evidence and by submitted false evidence that all parties exemplify an intent “to manipulate, deceive and/or defraud.” the Plaintiff and the Court. The Southern District Court of

New York, also known as the Second Circuit has held that Rule 9(b) requires fraud complaints to allege facts that lead to a “strong inference” that the defendant has the requisite state of mind.

Plaintiff’s Motion for my Proposed Amended Complaint harkens back to the Court’s Scierter, notation by Judge Abrams in her Order and Decision filed in Doc, 187 on 12/21/21 on page 19 of 26. Judge Abrams wrote ~ “ *Trombetta also states that the use of her biography was unauthorized and that she contacted WorthPoint to inform the company of the “false posting” Id at 6. In other words, her biography was not “licensed by WorthPoint” as the webpage claimed. At this stage Trombetta’s allegations with respect to the falsity of the CIM are sufficient to state a claim. They are sufficient to allege scierter as well.*” Prior to Judge Abrams December 21, 2021 conclusion, Judge Caves’ March 19, 2020 Order and Decision, Doc. 40 on page 10 of 14 stated “ *With respect to the scierter element of both the § 1202(a) and § 1202(b) claims, the “Second Circuit has stated that courts should be lenient in allowing scierter issues to survive motions to dismiss.” Aaberg, 2018 WL 15803037, at \*9 (citing In re DDAVP Direct Purchaser Antitrust Litig., 585 F.3d 677, 693 (2d Cir. 2009))*” . ~ *Ms. Trombetta alleges that she contacted Mr. Novocin, Worthpoint.com employees, and Mr. Seippel on more than one occasion to complain about the misinformation in the internet posts about the Painting and request their removal. She alleges that, as to EAI, Mr. Novocin deliberately disregarded her requests and told her, “Go For It and Hire an Attorney,” and as to Worthpoint.com, Mr. Seippel instructed that the posts be removed, but they were later reposted.*” The degree of the scierter element is typically and presumably determined throughout the Discovery process. Scierter can be proven by the presentation of evidence to show the perpetrator's state of mind, one of the key elements in F.R.C.P 9 (b) and must be plead with particularity. The evidence must typically show that the perpetrator acted knowingly, willfully, intentionally or in reckless disregard of the law. Plaintiff has detailed statements and facts below.

Pleading Rule 9(b) of the Federal Rules of Civil Procedure permits allegations of malice, intent, knowledge, and other conditions of the mind to be alleged “generally”. To plead such allegations sufficiently, one must offer sufficient facts to render the condition-of-the-mind allegation plausible. “In order to properly plead fraud with particularity, the complaint must

allege the time, and content of the fraudulent representation such that a defendant can prepare an adequate response to the allegations.” The Second Circuit standard goes beyond general statements when alleging intent. Plaintiff will meet this standard by “(1) alleging facts to show that Defendants had both motive and opportunity to commit fraud, or by (2) alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness.

” *PetEdge, Inc. v. Garg*, 564088, at \*9 (S.D.N.Y. Feb. 10, 2017).

The elements of fraud are as follows:

- 1 -A lie or falsehood is made.
- 2- By the defendant with scienter, and the statement is false, or that there is no basis for believing that the information is factual.
- 3- The defendant intends to cause the plaintiff to do or not do some particular act based upon their falsehood or lie.
- 4- The plaintiff is justified in relying on the falsehoods or lies told by the defendant.
- 5- Harm results from the plaintiff’s reliance on the defendant’s statements Causation loss is “the causal link between the alleged misconduct and the economic harm ultimately suffered by the plaintiff.

## **STATEMENT OF FACTS AND RELEVANT PROCEDURAL HISTORY**

Please see attached Proposed Second Amended Complaint Court Application for the full Statement of facts that correlate to First Defendants Estate Auctions Inc and Norb and Marie Novocin

## **Statutes of Limitation for Fraud in New York ~ Six Years GENERAL or Two Years From the Time of the Confirmed Fraud.**

Under New York law, an action based upon fraud must be commenced within six years of the date the cause of action accrued, or within two years of the time, the Plaintiff discovered or could have discovered the fraud with reasonable diligence, whichever is greater. The cause of action accrues when “every element of the claim, including injury, can truthfully be alleged” “even though the injured party may be ignorant of the existence of the wrong or injury. Mere suspicion will not constitute a sufficient substitute” for knowledge of the fraud. Thus, while it is true that New York courts will not grant a motion to dismiss a fraud claim where the plaintiff’s knowledge is disputed,

courts will dismiss a fraud claim when the alleged facts establish that a duty of inquiry existed and that an inquiry was not pursued.

Plaintiff detailed in my Memorandum for WorthPoint the unending misrepresentation by WorthPoint Corp and eBay spanning a period from August 2015 through to 2017. Plaintiff did not conclusively confirm in Dec/Jan 2015 and 2016) that the eBay sale occurred. The eBay rep deemed the EAU 2012 sale “Undefined” This is duly recording in **Plaintiff’s eBay. m4a Evidence 000328 (phone recording)**. In 2017, Plaintiff could not understand why the internet link that was supposed to be permanently removed by WorthPoint, was under my name, again. On Jan. 4, 2017 I sent an email to WorthPoint Corp and did not receive any response. I then reached out to EAI to try find out if EAI uploaded the 1972 eBay sale and posted it on the internet. On Jan. 10, 2017, Plaintiff called (302) 628- 9120, the telephone number associated with EAI. I spoke with Marie Novocin to find out if they were the sellers of the painting and if they had any information as to why their 2012 eBay sale was on the internet. coming up under my name. I also asked if they knew who had the painting. Shortly after, my phone call to Marie Novocin, Defendant, Norb Novocin phoned Plaintiff at my home number on Jan. 10, 2017 at 7 ;10 as documented in **Plaintiff’s Evidence 000330 Norb Novocin m4a (phone recording)**. This phone call affirms Plaintiff’s questions to Mr. Novocin’s affirms that he was indeed the seller of the painting. Mr. Novocin said he phoned me to tell me “ *he has a wealth of no knowledge*” pertaining to the computer data. etc. Plaintiff documented with the Court Mr. Novocin quote to me to “ Go For It and Hire an Attorney” professing that we did nothing wrong. Months later exhibited in **EAI 000001 to Evidence EAI 000003** is Plaintiff’s hired attorneys’ letter dated August 28, 2017 sent to Mr. & Mrs. Norbert and Marie Novocin Estate Auctions Inc. Upon a lack of response from EAI

of EAI ignoring the letter by my attorney Plaintiff filed this lawsuit within months sent n Feb. 5, 2018. My decision to filed a lawsuit against EAI and Norb and Marie Novocin. was to legally declare the 1972 Original Oil Painting is not painted or signed by me. I do not want to be associated with this image. Estate Auction Inc. and attorney Anderson Duff clearly pointed out and wrote in an e-mail dated March 1, 2019 “ *We now understand that at least one third-party internet site scraped information about the December 1, 2012 eBay sale that contained the mis-attribution naming Ms. Trombetta and reposted the same on its website at least twice. Because Estate Auctions has no control over this third party, Ms. Trombetta had difficulty removing this information from the website.* A settlement conference in the spring of 2019 before Judge Abrams was unsuccessful with an offer of one hundred dollars, Upon Judge Abrams ruling, Plaintiff was permitted to Amend my initial complaint to include WorthPoint Corporation. In April 2022, EAI produced evidence in EAI000011 thru to EAI00019 , a signature in red pencil which has a different spelling than the Plaintiff. Additionally Plaintiff produced my signature and print on or around the year 1972. In reviewing the initial Discovery responses from both Defendants Plaintiff Motion to file to include Fraud on May 18, 2022 Plaintiff filed a Motion to Amend my Complaint to Include Fraud and request Permanent Injunctive Relief in Doc.224. Judge Cave’s Order denied without prejudice Plaintiff’s Motion.

### **PLAINTIFF’S PROPOSED AMENDED COMPLAINT**

### **TO INCLUDE FRAUD BY EAI AND NORB AND MARIE NOVOCIN**

The Plaintiff inclination to include Fraud 9 (b) harkens back to Document 29 filed on December 3, 2019 Plaintiff brings to the Court’s attention Page 2 and 3 of 16, in Plaintiff’s December 3, 2019 filing. **EXHIBIT #1** Doc. 29 page2 and **EXHIBIT # 2** and **EXHIBIT #3** Doc. 33 filed on January 17, 2020 Page 14 - Relief #4 Identity Theft on a Public Platform. The Identity Theft and The



Assumption Deterrence Act as each separate law or claim applies to one or both Defendants and is within the statutes of limitations. The Photo of the signature “A. Trombetta” that is not of the hand of the Plaintiff, had “copyrighted work licensed by [worthpoint.com](http://worthpoint.com). It is a fact that the Plaintiff never signs in oil just the first letter of Plaintiff’s first name. This constitutes “Identity Theft” -**Definition:**

Iden-ti-ty theft noun: **identity theft**; plural noun: **identity thefts**

1. the fraudulent acquisition and use of a person's private identifying information, usually for financial gain.
2. **Identity theft** and **identity fraud** are terms used to refer to all **types of crime** in which someone wrongfully obtains and uses another person's personal data in some way that involves **fraud** or deception, typically for economic gain.

1. 18 U.S. Code §1028. Fraud and related activity in connection with identification documents, authentication features, and information (a) Whoever, in a circumstance described in subsection (c) of this section 1) knowingly and without lawful authority [produces](#) an [identification document](#), or a [false identification document](#); (2) knowingly [transfers](#) an [identification document](#), [authentication feature](#), or a [false identification document](#) knowing that such document or feature was stolen or produced without lawful authority;
2. Under the Identity Theft and Assumption Deterrence Act, it is a federal crime when a person "knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.”

Plaintiffs seeks a Motion for Leave to Propose Plaintiff’s Amended Complaint, to streamline this action when the Plaintiff pleads factual content that allows the court to draw the reasonable inference that all the Defendants are liable for the consistent and willful fraudulent misconduct alleged in this filing. Granting Plaintiff’s Motion to Amend Plaintiff’s Complaint,

allows the Plaintiff to submit new evidence verifying the fraudulent offenses described below, while demonstrating the justification for the Plaintiff's need to warrant legal action against both Defendants. All Defendants, prior to litigation have willfully contributed to displaying and purporting on the internet, absurd (4 ft painting at age 9), facts altering information adversely affecting Plaintiff's income producing ability and reputation. and creating falsities to include 1) a photo of false signature misattributed to Plaintiff 2) misrepresentation of my biographical history 3) visual circulation on the internet of false copyright and licensing claims by WorthPoint Corp. 4) false, misleading claims and association of the Plaintiff's name and biography with EAI, eBay and WorthPoint Corporation and 5) a damaged 1972 painting too large to paint at age nine. The seven Counts of Fraud described below begin chronologically and end in the order of importance.

**1) FRAUD ~ COUNT I ~ DEFENDANTS' KNOWN FALSE WRITTEN MISREPRESENTATION FRONTAL SIGNATURE "A. TROMBETTA" PHOTO**

The first false written misrepresentation of significant consequences pertains to the only visible photo that appeared in the ad for the 1972 Original Oil Painting Man With Red Umbrella that was misattributed to the Plaintiff. The photo appears to be a signature in black oil paint on a canvas.

Plaintiff has always regarded this signature as difficult and inclusive to be perceived as "A. Trombetta" It appears I am not alone. In the Sept. 21, 2022 Novocin deposition, WorthPoint's attorneys posed this question to Mr. Novocin, "From your experience, what is the importance of a writing being on the back of the stretcher as opposed to the painting itself, if any?"

Defendant Norb Novocin on page 37 and 38 duly stated on Sept. 21, 2022: "It helps us to understand what the signature was on the front. In other words, the signature on the front of the painting was garbled and it was kind of hard to read, when you turn it over, it had printed out what was and if it were up to me, I would make it almost a law that all the artists had to print out the

actual name and so forth... Because some artists pictures are so, so hard to read. So this allowed us to be able to look up Trombetta, Annamarie. This one says Maria. I didn't remember it saying Maria, but that's how I looked it up".

Plaintiff reminds the Court that the signature "A.Trombetta " was the only photo in the 1972 ad on the WorthPoint website despite the EAI ad claiming that there were 12 photos. The ambiguity of the signature on the front the 1972 Original Oil Painting has been deemed "garbled" by the very person who allegedly created the eBay ad for the 2012 sale. Mr. Novocin affirmed that the signature, that was circulated throughout the internet under my name " was hard to read". Mr. Novocin states this signature was hard to read however it had my biography next to it, It is puzzling the this photo of the signature survived when all the other photos of the painting vanished. By willfully taking and included in the eBay ad for the 1972 oil painting Man With Red Umbrella, my name, my self authored biography with this "garbled" signature, a public false identity was circulated throughout the internet in my name. This garbled signature in the photos became a false identification documented feature . This fraudulent signature acquisition on the oil painting and use of the Plaintiff's personal private identifying information in my biography constitutes identity theft. As a result the Plaintiff went to my bank to alert the bank and inform them of the signature. My evidence as proof is in **Plaintiff's Evidence 000237**. I also put a credit freeze on my credit cards as evidenced in **Plaintiff's Evidence Plaintiff 000248**. Plaintiff need to bring to the Court's attention "Why was a photo taken of this signature? More importantly it was a false misrepresented . This false signature in the EAI ad on WorthPoint's website was listed under my name. Plaintiff is alleging and assert through Mr. Novocin statements that he knew the front black oil painting signature on the 1972 oil was questionable. Plaintiff set forth these reason in support of my allegation of intentional misrepresentation.

**2) FRAUD ~ COUNT II ~ DEFENDANTS' KNOWN FALSE WRITTEN****MISREPRESENTATION OF ARTIST DUE TO THE AGE AND YEARS STATED**

Plaintiff brings to the Court's attention the screen shot box below taken from the original text of the 1972 EAI eBay ad for the 2012 sale. Duly documented is the year of Plaintiff's birth is in the EAI eBay ad and is indeed written correctly as 1963. The painting is dated 1972, Based on the math, the age of the Plaintiff and the height of the Plaintiff at age nine, it is impossible for Plaintiff to be the artist. Plaintiff alleges that since Norb Novocin found, sold and created the text for the EAI eBay sale Mr. Novocin was aware that the Plaintiff year of birth was 1963. Mr. Novocin chose to include the year of 1963, in his advertisement description. The year 1972 was

"Gifted" 1977, "Painted" 1972. To our eyes it looks like it is after the style of Andre Kohn. It is quite large being approx. 48 1/2" tall and 17 1/2" wide. We are calling it shabby chic condition as it has a tear in the canvas, about 5/8" long just to the left of the man's knees, but still such a great painting. For those not familiar with Trombetta, here is information about her from off AskArt as they got it from her website: Annamarie Trombetta (1963 - )

designated as the year the oil was painted. It is evident and based on the exact statements in the text that Defendant Norb Novocin wrote and noted, Mr Novocin it is verified that he had to be aware of the Plaintiff's age. Therefore, the fact that Plaintiff was nine years old when this painting was dated is duly known by [the] defendant. This text in the EAI ad is a prime element of intent to commit fraud exemplified and unequivocally exhibited in writing by Mr. Novocin. He knew or should have known the facts and age Plaintiff. Intent to willfully commit fraud or willfully deny liability is duly revealed with the years of the artist's birth and the painting date in such close proximity to one another in the EAI ad. Circulating a low bid, questionable claim of attribution to sell a damaged painting on the internet caused Plaintiff professional and financial embarrassment and injury to the Plaintiff reputation and name. There is no basis for believing that the information is factual and in this case it is obvious that a nine year old cannot paint a four foot high

painting. These elements of Fraud are evident by the alleged facts claimed and documented in the EAI ad. The inclusion of the description, “shabby chic” lacks professionalism and the term “Gifted” implies that it was not sold. The low bid price, given its size, diminishes my actual prices, my name or “brand” and implies I use inferior materials due to a tear in the canvas.

### **3) FRAUD ~ COUNT III ~ DEFENDANTS’ KNOWN FALSE WRITTEN MISREPRESENTATION OF NAME ANNA MARIA SIGNATURE IN RED ON THE BACK OF THE CANVAS ALSO CONSTITUTES “FALSE ADVERTISING”**

The third count of fraud for a known false written misrepresentation is evident in the description for the 1972 Original Oil Painting Man With Red Umbrella and the false, misleading and misrepresentation by EAI and Norb Novocin claims of my full name on the back of the 1972 oil painting. The use of my name as the artist adversely impacts the quintessential, vital earning potential that a visual artist has—the pristine notoriety of one’s name. The well respected reputation of an artist name known for achievements commands a greater demand for one’s artwork and ultimately increases one’s price point and earning potential. In the EAI ad. Plaintiff notes to the Court the careless misspelling of my last name by Norb Novocin in the EAI ad “*This is by Annamarie Trombett [ e ]-* spelled with an E at the end. This was duly noticed by one of my potential witnesses, Alex Raspa who produced a letter that remarks on such an embarrassing spelling mistake as well as the date of the oil and my listed year of birth. This spelling mistake and the content in the EAI ad prompted Mr. Raspa to contact me to alert me about the false listing on the internet. His comments are evidenced in **Plaintiff’s Evidence Plaintiff000241**. The incorrect spelling of my first name is documented by Mr. Novocin and was displayed to the public. I have noted over time, a pattern of misspellings, incorrect facts, vague inferences, willful concealments or delays in purporting a single responses to Plaintiff’s reasonable and direct questions. EAI Defendants have demonstrated a plethora of willful concealments. One in particular importance is Mr. Novocin’s description, spelling and location of a signature in “red” not stating it was in pencil.

*“It is signed on the bottom, but on the back it has written in red on the stretcher, Annamarie*

*Trombetta “ Gifted “ 1977 “Painted” 1972.* The red signature in colored pencil not oil is highly suspect as a legitimate signature due to the fact that it was an oil painting, not a work on paper.

As aforementioned Norb Novocin could not discern the alleged name “Trombetta” from the front signature on the canvas. Novocin claims the signature in red pencil, is the source, the reason and the foundation upon which Mr. Novocin misattributed a “run of the mill painting” as was described by Mr. Novocin, on page 43 of his deposition. Based on limited information, one source of reference and a willful affirmation that he did not look at Plaintiff’s website, Mr Novocin designated my biography and name to attribute to the oil painting found in an attic in Chicago. For the record I have never been to Chicago nor do I know or sold an artwork to anyone in Chicago. Mr. Novocin’s one stop research, demonstrated negligence even reckless behavior by omitting any other research via the internet or the Plaintiff’s website. He failed to look up any other images and confirm or contact the Plaintiff to validate if I was the artist for his painting that Mr. Novocin named “Man With Red Umbrella”. The fact that the alleged source used by Mr. Novocin did not feature any visual images, other signatures or prices for sold artwork are important issue to overlook. It is not plausible for any person to believe Mr. Novocin’s rational, if any, given his limited, attempt to search for any other credible facts other than AskArt.

Aside from all this, the long awaited production of the red signature has at least three misspelling in relation to the Plaintiff. Moreover and what is important to note is, within the text of the EAI ad the name “Annamarie” is written as all one word, without a space in the middle and each spelling of Annamarie ends in the letter “e” at the end. The name “Annamarie” appears six times in the text of the EAI ad and all the spelling is consistently one word, not two separate names and not with the letter [a] at the end—marie not Maria. The text spelling contradicts the red signature spelling.

On page 53 of Norb Novocin’s Sept.21, 2022 deposition, he states

” Once I saw the name on the back, I went to askArt. I put in the name Trombetta and Annamarie come up. It’s an unusual name. I have never come across it before. I did not—I do not remember seeing Anna Mari[A] on the back of the painting, so I just assumed it was the same person.

Mr. Novocin continues on page 54 of his deposition : “ I saw it had a biography, but no record of any paintings ever been sold, which I’ll just leave it at that. There’s no records of any painting been sold on secondary market. I grabbed the biography and used that in the listing. Because there was no records of any painting to be sold, I wanted people to be able to associate somebody of value to the painting and so I went out and found another artist on askART that has painted before with umbrellas. I said it’s much in the style of and I mentioned that other person. So that way people can look it up and say, oh it’s like that person. They paint with umbrellas also. That way, people do some research on it. They see something of value and are willing to spend more money.”

Defendant Norb Novocin is referring to artist Andre Kohn. Mr. Novocin statement in his deposition demonstrated that he looked up another artist who paints umbrellas but WILLFULLY FAILED to look up the Plaintiff’s credentials or website to see if the Plaintiff painted umbrellas which to date, I have not.. BELOW is the EAI statements. Mr. Novocin’s negligence and omission to look up the Plaintiff on the internet was a conscious decision in the same way his decision and reason to include Andre Kohn and associate his name with the Plaintiff. Mr. Novocin’s rational was to add ‘Value so the buyer is willing to spend more money. ’ Mr. Novocin clearly states his incentive to associate the work of Andre Kohn was for financial gain. For the record, a secondary market does not give an artist any

This is by Annamarie Trombette. It is signed on the bottom, but on the back it has written in red on the stretcher, Annamarie Trombetta "Gifted" 1977, "Painted" 1972. To our eyes it looks like it is after the style of Andre Kohn. It is quite large being approx. 48 1/2" tall and 17 1/2" wide. We are calling it shabby chic condition as it

financial income or gain in reputation unless the secondary market or auction house is one of artistic notoriety such as Sotheby’s or Christies’ or at a Museum Auction where I had my works sold at auction. I might add that my works were bid on and sold for a higher price at auction, than my personal price point.

Moreover to add to this important count for Fraud is Plaintiff’s first legal filing and documentation of Plaintiff request for Defendants production of the signature in red duly noted in the 1972 Original Oil Painting Man With Red Umbrella. My request is in **Doc. 22 filed April 24 2019 on Page 10 of 38 now Plaintiff’s Evidence000387- I.** In April 2019, after a disappointing settlement conference with Defendants who failed to offer anything greater than one hundred dollars Plaintiff offered a potential

resolution . In response to this disappointing condence, I filed a letter offering to reduce the amount of settlement if the of items listed in the EAI such as the 12 photos, the red signature, the buyer etc .were produced. Plaintiff's 2019 conditional offer request in Doc. 22 did not receive any response from EAI Defendants, nor attorney Anderson Duff . Number three on page 10 now bate stamped as **Plaintiff's Evidence 000387I** lists as No. 3. my request for “ *A photograph of the actual signature in red described on the back of the painting.* “ It took an additional three years for EAI to produced photos of the signature in red which is in pencil and clearly misspells the Plaintiff's name to render the signature verifiably not the Plaintiff's .

The LOSS of time from Jan. 2017 to April 2022 is five years, three years to includes litigation. The willful delay and concealment of the misspelled red signature was obviously known and purposely withheld to prolong and hopefully run out the time for the statues of limitation for fraud.. The red signature conclusively proves I am not the artist. Moreover from 2017 when I first informed Norb Novocin that I was not the artist, the Defendants have not produced the artist who painted Man With Red Umbrella nor the signer of this painting. The fact that an artist has not been identified supports Plaintiff assertion for willful concealment from 2017 to 2022. The willful and deliberate failure to respond or reasonably reconcile before or during this lawsuit supports Plaintiff claims of willful intent to commit and conceal fraud. The Defendants false material misrepresentation, material omission and material delay of such s pertinent detailed fact ie the red signature, verifies a false attribution and that the Plaintiff is not the artist. Aside from this Defendants objected to Plaintiff request to know the location of the signature in red several time.s Defendants failure to produce the location caused Plaintiff to subpoena the woman who possess the painting. The signature is located midway on the top stretcher bar of a four foot painting. All of the aforementioned constitutes willful concealment.

Moreover, Plaintiff produced my childhood signature in print and in script on or around the year 1972 and is numbered in my exhibits as **Plaintiff Evidence 000316** and **Plaintiff Evidence 000260** which is a full page of my script and print on or around 1972 and **Plaintl's Evidence 000495** exhibit how Plaintiff printed and scripted the letter “A” My evidence verifies that I am not the artist nor did I sign the 1972 oil. Despite production of verified proof, on Nov. 23, 2022 attorney Anderson Duff



rejected settlement talks. Once again Plaintiff filed this lawsuit due to the willful denial by the Defendants to accept the fact that I am not the artist and that the Defendants cannot falsely attribute my name to painting they sell that I did not create. Since the 1972 oil painting does have my name on it, over time, I do not wish for a "run of the mill 1972 oil painting, as Mr. Novocin classified the oil, to be named or in questioned as part of the my oeuvre, or attributed to my name as one of artist. At this point in the case and with the evidential facts duly documented, any reluctance in resolving this lawsuit constitutes fraud and direct S 190.20 False advertising

A person is guilty of false advertising when, with intent to promote the sale or to increase the consumption of property or services, he makes or causes to be made a false or misleading statement in any advertisement or publishes any advertisement in violation of chapter three of the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended, addressed to the public or to a substantial number of persons; One of the main elements of fraud is

**4) FRAUD ~ COUNT IV ~ DEFENDANTS' KNOWN WRITTEN REPRESENTATION OF PLAINTIFF'S WEBSITE AND THE NEGLIGENCE BY DEFENDANTS IN NOT VIEWING OR NOT CONTACTING THE PLAINTIFF**

Plaintiff brings to the Court's attention the next issue that is duly documented in the EAI eBay ad for the 1972 oil painting Man With Red Umbrella. Clearly referenced and written in the statements in the box below is the Defendants reference to my website ,right next to my full, correct name and birthyear.

condition as it has a tear in the canvas, about 5/8" long just to the left of the man's knees, but still such a great painting. For those not familiar with Trombetta, here is information about her from off AskArt as they got it from her website: Annamarie Trombetta (1963 - )

EAI is responsible for creating the text in their ad in order to sell their painting on eBay. Plaintiff had nothing to do with creating the painting, therefore it stands, I nothing to do with consenting to the use of the text in the ad. The Defendant willfully selected what they chose to include in their ad which states that I had a website. Plaintiff addressed asked Defendants in my Discovery why they did not contact me since they knew I had a website. in my first and second set of Interrogatories. In April Plaintiff

received a full objection and in August Defendants also objected and stated Defendants object to this Interrogatory insofar as it asserts that Defendants knew Plaintiff had a website. Below is Plaintiff's interrogatory and direct response set forth on August 3, 2022 by EAI Defendants who delayed responses for over a month and forced the Plaintiff to send several emails in pursuit of Defendants responses.

**PLAINTIFF'S INTERROGATORY NO. 19]:**

Explain in DETAIL why Norb and Marie Novicin did not contact, phone or email the Plaintiff. Duly stated in the Estate Auction's ad is the claim "AskArt got the biography from Plaintiff's website" proving Estate Auctions Inc/Norb and Marie Novicin knew Plaintiff had a website.

**RESPONSE TO INTERROGATORY NO. 44 [PLAINTIFF'S INTERROGATORY NO. 19]:**

Defendants object to this Interrogatory because it exceeds the number of interrogatories one Party may serve on another Party pursuant to Federal Rule of Civil Procedure 33(a)(1). Defendants object to this Interrogatory insofar as it asserts that Defendants knew Plaintiff had a website.

Additionally, Plaintiff adds an affirmation by Norb Novocin from his Sept. 21, 2022 deposition regarding Plaintiff's website. When asked by WorthPoint's attorney the following question:

*"Did you ever see the website of artist Annamarie Trombetta?"*

Mr. Novocin affirmed on page 58 *"To this day [Sept. 21, 2022] I have never been to that website."*

On the following on page 59 Mr. Novocin was asked by WorthPoint's attorneys if he *"copied the entirety of the biography on askART to include any listing or something else?"* Mr. Novocin

stated *"It happened entirely there"* and when asked by WorthPoint's attorneys

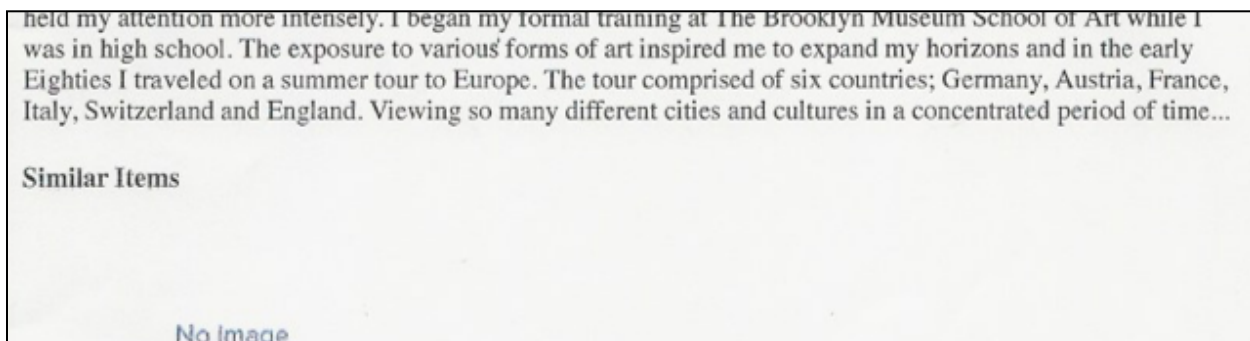
*"Did you edit the biography in any way, shape or form?"* Mr. Novocin stated *"No."*

Mr Novocin stated on page 60 and 61, in his deposition, *"When I compose a listing for eBay, I do what I call finding a hook to hang my hat on. What story am I going to tell that allows people to dig deeper into their wallet to spend more money."*

1) The first issue Plaintiff brings to the Court's attention is the length of Plaintiff's biography used in the EAI eBay ad for the 1972 oil painting. Both Defendants, WorthPoint Corp and EAI now claim years later that my full biography was used., despite the visual evidence of the listing which verifies that Plaintiff's biography was truncate, What disproves their claim is the visual proof of their ad which documents the truncation. EAI Defendants failed to produce any visual documents to substantiate their claim . Both Defendants claim they no longer have any computer data for the

internet posting. The failure by both Defendants to produce proof of their computer data adds to the number of Defendants claims that are devoid of any tangible proof. Plaintiff is reliant on both Defendants to produce such data and documents which is a key element in a claim for fraud. Another element is that The plaintiff is justified in relying on the falsehoods or lies told by the defendant. It is the complete absence of all evidence by EAI that makes their claims impossible to believe. In like fashion it is the Plaintiff's positive visual proof that supports my obvious claim that my full bio was truncated.

Plaintiff has consistently written and filed the actually EAI eBay ad for the 1972 Oil Painting Man With Red Umbrella in all my filings with the Court which clearly documents that Plaintiff's biography was truncated and mutilated mid sentence. The last statement in the EAI/ WorthPoint ad is in a screen shot below and has four dots .... depicted, and the rest of the sentence is missing and had written under it "Similar Items" with "No Image " and the title 1972 Original Oil.....Red Umbrella that is next to a gray square under the NO Image Icon seen below in the boxed insert.



2) The second issue is the fact that the Defendants listed the fact that I had a website. Mr. Novocin willfully denied ever visiting my website. This was and still is his conscious choice not to visit my website that he duly listed in the ad , an ad he wrote and composed as documented in his deposition. Novocin's negligent choices duly affirmed, are the root cause of Plaintiff's false misrepresentation. Defendants objected to Plaintiff's direct question, to state why EAI Defendants did not contact me to confirm their attribution. Their objections further verifiers willful negligence and a willful intent to conceal their negligence indicative of the character of one's intent to willfully commit fraud, with the intent , to get "people to dig deeper into their wallet to spend more money." as Novocin stated.

The Defendants' misrepresentation, with visually displayed text of my my self authored biography without my authorization was conjoined with the written notation of Plaintiff's website, This a prime example of identity theft. Defendants took specific personal, self identifying facts and information only applicable to the Plaintiff and used it to increase the financial worth of a damaged painting . The sole purpose of the EAI eBay ad is for commercial use and to render a greater financial gain for the 1972 damaged painting. Plaintiff's sole purpose for bringing this legal action against both Defendants is to impose legal liability to this one action, it is also to impose permanent inductive relief to legally prevent any and all future fabrication and false attributions by both Defendants from plaguing the Plaintiff.

**5) FRAUD ~ COUNT V ~ DEFENDANTS' WRITTEN DECLARATION MISREPRESENTATIONS TO WORTHPOINT DEFENDANT AND PLAINTIFF**

In April 2022, EAI 's attorney Anderson Duff misrepresented to the WorthPoint Defendants and Plaintiff a willful false misrepresentation and denial that documents exist relating to the research conducted by EAI Defendants in determining the authorship and attribution of Artwork.

Mr. Duff' claimed no such documents exit. SEE BELOW

**WORTHPOINT'S REQUEST NO. 3:**

*Documents and Communications relating to the research conducted by EAI Defendants in determining the authorship and/or attribution of the Artwork.*

**EAI RESPONSE TO REQUEST NO. 3:**

*No such documents exist.*

Mr. Duff has willfully omitted producing or referencing the Court filed documents in Doc.56 filed June 26, 2020 Declaration of Norb Novocin Page 1 of 4 Novocin declaration includes four pages. Mr. Novocins Declartion is in **Plaintiff Evidence 000174, thru Plaintiff000176**

Three statements below assert research conducted by EAI Defendant to determine attribution.

*4. As was our typical practice, I conducted research t the Painting using online research tools designed for that purpose to identify the artist who signed the Painting using online research tools designed for that purpose such as Ask.Art,com,,*

*5. When researching the Painting, I found only one artist whose name matchced "A. Trombetta" and that artist was the Plaintiff, Annamarie Trombetta. Because —Annamarie Trombetta" was written on the back stretcher of the painting, we concluded that Plaintiff created the Painting.*

*6. Before seeing the name Annamarie Trombetta on the Painting and researching the artist so that we could create accurate listing for the Estate Auctions storefront describing the Painting. I had never heard of Annamarie Trombetta*

Mr. Duff has willful omitted producing or referencing the Court filed documents in Marie Novocin's Declaration Doc. 57 Filed 06/26/20 Page 1 of 4 to WorthPoint's attorneys and to the Plaintiff in Marie Novocin's Declaration is in **Plaintiff's Evidence 000332, thru Plaintiff's Evidence 000335**

MARIE NOVOCIN DECLARED ON JUNE 26, 2020:

*4. As was our typical practice, my husband Norb conducted research to identify the artist who signed the Painting using online research tools designed for that purpose such as AskArt.com.*

*5. When researching the Painting, my husband Norb found only one artist whose name matched "A. Trombetta" and that artist was the Plaintiff, Annamarie Trombetta. Because "Annamarie Trombetta" was written on the back stretcher of the painting, we concluded that Plaintiff created the Painting.*

*6. Before talking to Norb about his research concerning the Painting, I had never heard of Annamarie Trombetta.*

EAI Defendants and their attorney willful omitted the production and request by WorthPoint request .is yet another example of willful denial and or concealment of any evidence that proves EAI adequately researched the authorship and attribution for the 1972 Original Oil Painting Man With Red Umbrella.as declared by both Defendants in their Declarations.

Moreover, both Maria and Norb . Novocin Declarations states in the source of Mr. Novocin created eBay listing for the 1972 oil using Plaintiff's bio was from my biography listed on askART.

NORB NOVOCIN

*7. I used biographical information about Plaintiff that I found on AskArt.com to ensure that the Estate Auctions eBay listing for the Painting was as accurate as possible. All of the information about Plaintiff that I included in the eBay listing was gleaned from AskArt.com*

MARIE NOVOCIN

7. Estate Auctions used biographical information about Plaintiff that Norb found on AskArt.com to ensure that the Estate Auctions eBay listing for the Painting was as accurate as possible. All of the information about Plaintiff that Estate Auctions included in the eBay listing was gleaned from AskArt.com.

Duly documented in the Terms of Use on AskART's website is the clear statement that users "may not modify, create derivative works from. participate in the transfer or sale of, on the World Wide Web or in any way exploit the site or any portion thereof for any public or commercial use without express written permission of askART. You are responsible for complying with all applicable laws. rules and regulations regarding your use of any such downloaded Content.

An excerpt from the the askART Terms of Use is below. The askART Terms of use are in Plaintiff's Evidence 000668 Plaintiff's Evidence 000669

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**6) FRAUD ~ COUNT VI ~ SIXTH FALSE WRITTEN MISREPRESENTATION  
IN SWORN DECLARATION OF NORB AND MARIE NOVOCIN**

As written above the Declaration of Norb Novocin is in Doc.56 filed June 26, 2020 Page 1 of 4 Novocin declaration includes four pages. Mr. Novocins Declartion is in **Plaintiff Evidence 000174, thru Plaintiff000176**. Marie Novocin's Declaration Doc. 57 Filed June 26, /2020 Page 1 of 4 Marie Novocin's Declaration is in **Plaintiff's Evidence 000332, thru Plaintiff'sEvidence 000335**

Plaintiff brings to the Court's attention the Declaration statements below referencing the years of Estate Auction Inc. dates of operation April 23, 2012 to 2019 written and declared by both Defendants Declarations.

**NORB NOVOCIN**

*1. Together with my wife and co-defendant in this case ,Marie Novocin, I owned and operated Estate Auctions, Inc. from April 23, 2012. until 2019*

**MARIE NOVOCIN**

*1. Together with my husband and co-defendant in this case, Norb Novocin, I owned and operated Estate Auctions, Inc. from April 23, 2012 until 2019.*

Plaintiff to add both the Novocin Declarations and statements and contrast the 2020 statements with this made on Sept. 21, 2022 by Norb Novocin regarding the names of his company Estate Auctions Inc and Estate Auctions LLCand the years of operation. They differ in detail from Defendants June 26, 2020 Declarations. In Norb Novocin Sept. 21, 2022 deposition on page 198 Mr. Novocin stated “ We have three different Estate Auctions, Inc. Estate Auctions Inc. in Florida



*started in 2001 and ended in 2012. Estate Auctions in Delaware started April 23, 2012 until it went defunct. We stopped using it July of 2013 when we stated Estate Auctions LLC. That started on July 15, 2013 —January 31, 2019.* On page 199 of Mr. Novocin's deposition he stated *"We just let it go defunct and Estate Auctions only had from April to July, April 2012 to July 2013, correct."* When asked if April 2012 to July 2013 was the time period for the 1972 oil painting sale, Mr. Novocin replied *"Correct"*.

Plaintiff notes to the Court, the propensity of EAI and Defendants Norb and Marie Novocin within their verbal and written responses, there is a consistent pattern of subtle yet substantial differences. There is either a complete omission of facts, a deficiency within their production of evidence, or a similar yet incorrect spelling or incorrect date, close to the original yet renders the fact or statement "False". Such is the case with the three names and three dates of incorporation for Estate Auctions Inc and Estate Auctions LLC.

Below is another example by both Defendants who have made written Declarations which state that the 1972 Oil Painting Man With Red Umbrella was "Gifted" in 1997. The EAI eBay ad and the signature in red on the stretcher bar state "Gifted" in 1977 and not 1997 which is incorrect. In like fashion, the Declarations of both Defendants state Estate Auctions Inc from April 23, 2012. until 2019 and does not state Estate Auction LLC.. The consistent subtle changes are evident in many of statements or production of evidence, most notably in the three recent productions for the eBay 2012 sales receipt for the 1972 1972 Oil Painting Man With Red Umbrella. The first production is dated April 27, 2022 and the other two differ in date and visual elements that Plaintiff will describe in detail below.

#### **NORB NOVOCIN**

*2. In 2012, Estate Auctions list painting on its eBay storefront that I personally inspected. The painting was assigned on the front by "A. Trombetta" and featured an inscription reading "Anuanarie Trombetta 'Gifted' 1997. 'Painted' 1972" in red along its back stretcher (the Painting).*

#### **MARIE NOVOCIN**

*3. In 2012, Estate Auctions listed a painting on its eBay storefront that my husband Norb personally inspected. The painting was signed on the front by "A. Trombetta" and featured an inscription reading "Annamarie Trombetta 'Gifted' 1997. 'Painted' 1972" in red along its back stretcher (the "Painting").*

Plaintiff addresses two statement made on Page 3 of Doc. 57 filed on June 26, 2020 which is the Declaration by Marie Novocin. In 2016 Plaintiff saw that he reposting for the 1972 oil painting was back on the internet after months of hard work contacting eBay and WorthPoint Corp to remove this false listing. The only source I never contacted was EAI. Upon discussions with a colleague and collector, I thought it best to have my collector Teri Meissner contact EAI to see if they had any information as to why the post was on the internet, if EAI had posted the 1972 sale again etc. Ms Meissner had a brief chat and as advised by Marie Novocine sent one email One phone call and one email is the extent of Teri Meissner's minor involvement, one so minor she does not even remember. When Teri did not receive an email response from EAI, Plaintiff on Jan. 10, 2017 phoned EAI. I introduced myself and stated that Ms. Meisner had contacted her. I informed Marie Novocin that I am an artist however I did not paint the 1972 oil painting. I asked Mrs. Novocin if EAI had anything to do with the internet link which was appearing under my name again. I asked if I could have the owner of the painting's contact information. Then I asked if they had any of the 12 photos etc. I also informed her that the photo signature was not mine. Shortly after Norb Novocin phoned me back which I found peculiar and unnecessary after conversing with his wife. I and decided to record the conversation. His first statement explained his call "I have a wealth of no knowlege regarding this painting"

Below are Marie Novocin statements from her Declaration. There were two calls one from Ms. Meissner and one from the Plaintiff. Again, Plaintiff called on Jan. 10, 2017 from home phone and I just like the Novocins have caller ID and as stated I identified myself citing the misattribution and the reposting of the 1972 internet link as my purpose for contacting EAI

*11. I did not think about the Painting again until I received a phone call from a person identifying themselves as Teri Meissner in January 2017. Meissner followed up with an email on January 6, 2017. Meissner did not say anything about the Painting be misattributed. Meissner's sole stated concern was the chain of ownership of the Painting. Meissner demanded that Estate Auctions provide her with the name and contact information for the third party who purchased the Painting in 2012. Despite several additional phone calls from the person calling themselves Meissner, they never once stated that the Painting had been misattributed and focused solely on the identity of the purchaser of the Painting.*

*13. After roughly the third phone call we received from the person identifying themselves as "Meissner," my husband Norb saw that the caller ID identified Annamarie Trombetta and not Teri Meissner.*



Plaintiff notes to the Court that in June 2020 EAI Defendants filed a Motion to Post a Bond against the Plaintiff in the amount of twenty thousand dollars. The Declarations that have false information were filed in support to impose a financial burden unto the Plaintiff. Plaintiff's sas explained in many documents, I informed Norb Novocin that I did not create the 1972 painting, I stated that this was fraud. When Mr. Novocin asked me *why is that fraud?* I simply stated "*I did not do this painting*". Despite informing both of the Novocins, first by a phone call to Marie and then Norb Novocin phoning the Plaintiff, Plaintiff still hired an attorney to inform in writing both parties of the infringements upon my name, my rights and the biographical copyright infringements. As aforementioned in Doc. 22 filed on April 24, 2019, Plaintiff requested the 12 photos, red signature etc and did not receive any response. Responding to this Motion caused the Plaintiff a loss of income as I had to turn down a commission due to Plaintiff's response required a time sensitive answer to Defendants Motion to Post a Bond. In like fashion Plaintiff had just begun a private tutoring session and had to postpone my availability until my Response Motion was filed. As a result the student decided to take an art lessons elsewhere.

## **7) FRAUD ~ COUNT VII ~ FALSE WRITTEN MISREPRESENTATION OF THREE EBAY RECEIPTS FOR ONE SALE IN 2012 FOR 1972 OIL PAINTING**

Plaintiff notes to the Court on April 27, 2022 EAI and attorney Anderson Duff produced the first version of the 2012 eBay receipt for the 1972 Oil Painting Man With Red Umbrella. On Sept, 21, 2022 WorthPoint during deposition brought to Mr. Novocin's attention the cut off areas of the eBay email on pages 72, 73 and 77 in which WorthPoint called for the full production of the EAI eBay receipt. There are now four versions of the ONE eBay sale by EAI on Dec. 1, 2012 for **FIRST EAI 2012 RECEIPT FOR 1972 OIL EAI00058/ 000059 PRODUCED ON APRIL 26, 2022** On April 8, 2022 the first Discovery between the Defendants and Plaintiff's evidence was due. On Wednesday, April 27, 2022 at 21:30:09 2022 Estate Auctions Inc.'s attorney Anderson Duff produced EAI000058 and EAI000059 after a Conference Call with Judge Cave. Plaintiff immediately noticed the following

- 1) 1972 Original Oil Painting Man With Red Umbrella Signed Annamarie Trombetta yqz is written twice in blue right — next to each other.
- 2) In EAI000058 the right side is cut off , deleting the date, the price, name and address of the buyer , etc. Again, this truncation was noted by WorthPoint’s attorneys as EXHIBIT #4 at the Novocin Deposition and called for a full production of this receipt.
- 3) the eBay logo is in a box devoid of the colored LOGO in red, blue, yellow and green.
- 4) a plain type eBay is written in a lined box.
- 5) Also missing is the bold colored yellow button with “Go to My eBay” which is below the text “Provide shipping information “
- 6) Last, missing below the Blue type under 1972 Original Oil Painting Man With Red Umbrella Signed Annamarie Trombetta yqz was either a the gray icon logo or what is a box with a blue square with a white question mark in it.

**SECOND** EAI 2012 RECEIPT FOR 1972 OIL EAI000060 NOVEMBER 16, 2022.

I remind the Court again that in Doc. 315, filed on Nov. 16, 2022, Plaintiff noted to the Court that Mr. Duff produced a complete uncut version of the alleged 2012 eBay receipt for the sale of the 1972 original oil also known as WorthPoint’s Deposition Exhibit #4. There are obvious differences in the new Nov. 16, 2012 EAI eBay receipt, bate stamped as EAI000060. Most notable is the visual absence of a bold yellow line. The text is quite small and the receipt is one page. The EAI000060 differences from EAI00058 and

EAI00059 are noted below **EXHIBIT #5 Nov. 16, 2022 Mr. Duff’s email with EAI000066**  
**EXHIBIT # 6 Second Production of Ebay receipt on Nov 16, 2022 EAI000066**  
**EXHIBIT #7 Plaintiff’s Octobre 29, 2022 Request for Ebay Receipt**

- 1) the 1972 Original Oil Painting Man With Red Umbrella Signed Annamarie Trombetta yqz is NOT written twice in blue right next to each other.
- 2) In EAI000060 the right side is **NOT** cut off
- 3) the eBay logo is NOT simple type and EAI000060 has an ebay color LOGO red, blue, yellow and green
- 4) The Blue box (above) with a blue square with a white question mark IS under 1972 Original Oil Painting Man With Red Umbrella Signed Annamarie Trombetta yqz.
- 5) MOST NOTEWORTHY is the MISSING YELLOW LINE through the bold type “Congratulations, your item sold !” 6) The 2017 email header is fully missing. Plaintiff notes to the Court, Mr. Duff submitted his EAI000060 by email on Nov. 16, 2022.

**THIRD EML** EAI 2012 RECEIPT FOR 1972 OIL PRODUCED TO PLAINTIFF ON NOV. 17, 2022

The third EAI sales receipt with visual colored icons differs from the other two eBay receipts:

- 1) It is NOT bate stamped or numbered. Documents needs to be numbered even if it is handwritten if it is to be evidence, as Plaintiff did on Sept. 21, 2022 .
- 2) It differs on the third EAI receipt from the EAI000058 and EAI000060 is near the top. Not written in the email is Subject: Date: From: before the To: Norb Novocin, marie novocain.
- 3) New and Different is a Logo EE circle up top, which is not on EAI 0058-0059-or EAI 0060. Unlike EAI000060, this document has a yellow line under “ Congratulations, your item sold !” It has the ebay color logo and box with blue question mark.

- 4) Again- as of Dec. 19, 2022 he eml. text is not bated stamped by EAI Defendants and was NOT mentioned or produced to Plaintiff before or after November 16, 2022. Mr. Duff produced EAI000060 as evidence, Plaintiff is requesting that the Court impeach or prohibit any possible use of EAI's undocumented, eml that was emailed to Plaintiff AFTER the production of EAI000060.

**FOURTH** EAI00065 EAI00066 EAI 2012 TEXT ONLY RECEIPT FOR 1972 OIL PRODUCED TO PLAINTIFF ON DECEMBER 7, 2022.

- 1) Produced on Dec. 17, 2022 is the full text (only) for the eBay 2012 sale. There are no visual icons or authentic indications that the original email was simply printed out and submitted.

Plaintiff is reliant upon EAI Defendants to simply produce one proof of purchase for the 1972 Original Oil Painting that EAI sold on eBay on Dec. 1, 2012. The fact that there are now four versions all of which are different in content and format, icons symbols and are optically different is very confusing and provokes inferences that contradict and confuse the facts. To date Mr. Duff has not bated stamped the eml that was allegedly sent to WorthPoint's attorneys on Sept. 21, 2022. As the Plaintiff and as a Pro Se litigant, Mr. Duff failed to convey on Oct. 28, 2022 nor on Oct 29, when I emailed Mr. Duff about the full production of the EAI ebay receipt. On Oct, 31, 2022 Mr. Duff did document in an email that when his clients produce the email, he would pass it on to the Plaintiff. On Nov 16, 2022 I reminded Mr. Duff again and upon day's end he produced EAI00060. The next day, Nov. 17, 2022 Mr. Duff and all the attorneys from WorthPoint alleged that Mr. Duff produce the EAI eBay receipt. in an eml text to the other attorneys.

As a result of the multiple misrepresentation of the EAI 1972 oil painting eBay sale Plaintiff was reliant upon the Defendant not to receive such indirect and misleading contradictory responses. To date the multiplicity of contradictory responses by EAI Defendants contributes to Plaintiff's emotional and physical distress that has delayed filing my Proposed Amended Complaint. I have been suffering profusely from emotional distress. Plaintiff after the Thanksgiving weekend was puzzled by the data produced by the Defendants. As a result Plaintiff was forced to contact my internet expert witness to open up Mr. Duff's eml message and secondly to decode the coding that was sent to Plaintiff from Adam Bialek. Mr. O'Leary's Affidavit and report has cost the Plaintiff several thousand dollars, all due to the cryptic and convoluted, confusing information in the guise of evidence.

It has been an ongoing willful pattern by EAI to conceal or reveal in parts and pieces pertinent

information that Plaintiff has a right to request. If the first EAI eBay receipt did not lack deficiencies or was not truncated on one side, Plaintiff would not assert misrepresentation of written receipts. The amount of time, involved in repeatedly requesting the same simple items and being met with unending, delays is disrespectful, unprofessional, subject to suspect and mistrust and has delayed the end of \

Discovery, to the point where I as well as my expert witnesses are frustrated by the inability to progress forward and complete the objective of producing a sound, informative substantiating report that supports the Plaintiff's infringements and problems. Despite this and as duly documented in the Nov. 23, 2022 transcript, the Defendants are unyielding to settlement talks or ending this lawsuit. Plaintiff regrets but must inform the Court, post the Nov 23, 2022 Conference call I was sent an email from attorney Anderson Duff s who informed me of his fees for his time on the Conference call. He also informed me his clients would be seeking attorneys fees upon the conclusion of my case. WorthPoint's attorney, Adam Bialek has informed me of the same assertion to burden the Plaintiff with attorneys fees. Once again Plaintiff has produce irrefutable evidence of my childhood signature. The infliction of fear and requests for production since mid summer to the present has caused Plaintiff to add a claim for IIED and Tort in my Proposed Amended Complaint.

**8) FRAUD ~ COUNT VIII ~ TANGIBLE CONVERSION (BIOGRAPHY IN CATALOG) TAKING AND MISAPPROPRIATION PLAINTIFF BIOGRAPHY**

**A)** A party has a cause of action for conversion when (1) the plaintiff has an exclusive right of possession, (2) into which the defendant, (3) intentionally, (4) interferes with that right. In general, conversion fraud deals with tangible goods. The Plaintiff's claim for tangible conversion fraud is founded on my exclusive right of possession to my original, self authored biography. It is a "literary work" written in prose, is an individual artistic expression and exists in a tangible form as my self published catalog. My self authored biography is also "fixed" and exists in a digital form on my professional and personal website. A fraud conversion claim is applicable to intellectual property rights if it is merged in the physical form and in this instance it is. My infringed biography exists in two personal tangible forms. Violations occur when a person

without authority or permission intentionally takes the personal property of another or deprives the Plaintiff of the possession of my exclusive rights to my self authored biography in my personal catalog. The original EAI eBay ad for the 1972 oil has Plaintiff's statement from my personal catalog which documents and references my personal property is "All of the imagery in this catalog was either created en plein air or from the subject directly." This personal statement referencing my catalog i in the Defendants version to include the Defendants EAI and WorthPoint's and their Confidential evidence. using my Catalog biography Both Defendants included and reference my statement regarding my catalog in the false ad for the 1972 oil painting and both Defendant s partook in the improper and unauthorized relocation of personal property.

The subject regarding the length of Plaitniff's biography in the EAI eBay sale ad was addressed on Page 91. A reference to the cut off statement "concentrated period of time" dot dot dot was noted by WorthPoint's attorneys to Norb Novocin who affirmed it's written presence. On Page 92 of Mr. Novocin's deposition he references computer software issues that " Might " have cut off the biography. Again EAI failed to produce any documents/ data what-so-ever.

**B)** There are two "improper" connotations and uses by the Defendants regarding my biography. First and foremost, I did not paint the 1972 Original Oil Man With Red Umbrella nor did I sign the painting. This is a proven fact. Plaintiff produced my childhood signature . It is in Plaintiff's evidence 000260, 000316 also in script and print number 000495. The EAI signature in red produce in Discovery by EAI, in April 2022 , misspells Plaintiff's first name and adds a space between ANNA and MARIA. The use of my personal self authored biography is "Improper" as it is wrongfully applied , I am not the artist who created. the 1972 oil. This conversion as aforementioned is unauthorized in every way. The EAI use of Plaintiff's biography was for commercial and selling purposes for a damaged 1972 oil painting. In like fashion, WorthPoint's website's chief purpose is to report the " commercial sales records" of items sold on eBay. WorthPoint has a membership charge in order to view the sales price. It is not free to see the selling price. Both Defendants have used my biography for commercial gain, ergo it is not fair use, rather

both Defendants perceive my name and biography as “fair game and falsely claim “ fair use . Plaintiff’s I self expression in my biography is original was never authorized to be used by Defendants as such . As a consequence of the unauthorized use of Plaintiff ’s biography by both Defendants, WorthPoint Corp. in particular, lost a sale of artwork to a prominent collector who most likely would donate her collection to a public museum. The financial and professional adverse effect that the infringement had on Plaintiff ( copyright owner) ability to earn income resulted in sustained inequitable financial and professional losses.

**C)** To make a claim for conversion, a plaintiff must show “(1) the appropriation of another’s property to one’s own use and benefit, (2) by the intentional exercise of dominion over it, (3) in defiance of the true owner’s rights.” (internal citation and quotation omitted) . As aforementioned, Norb Novocin admits in his Declaration filed on June 16, 2020 that he did not know or never heard of Plaintiff’s name before. Allegedly he used one source, which he designated as askART to unethically cease or “Glean” Plaintiff’s biography. As of Sept. 21, 2022, for the first time since 2018 when this lawsuit began, Mr. Novocin now claims that the Plaintiff’s full biography was taken from askART.com.

**D)** To prove conversion that claim out, a plaintiff must allege: “**(1)** the property subject to conversion is a specific identifiable thing; Plaintiff gives a personal, detailed description of my life experiences, from childhood ( Regina Pacis Church) to my formal training in high school at the Brooklyn Museum and ending with the names of my personal esteemed colleagues in the art world. **(2)** plaintiff had ownership, possession or control over the property before its conversion; and Plaintiff’s catalog and website were printed created in 2003. The EAI ad for the damaged 1972 oil painting (albeit incorrect) was allegedly sold in 2012, which was nine years after my website biography and catalog were created. **(3)** defendant exercised an unauthorized dominion over the [property], to the alteration of its condition or to the exclusion of the plaintiff’s rights.” *Moses v. Martin*, 360 F. Supp. 2d 533, 541 (S.D.N.Y. 2004) (citation and internal quotation marks omitted). The “conversion “ and addition of the EAI introduction and the description that precede the Plaintiff

true biography of the damaged 1972 oil painting (albeit incorrect) is roughly 230 words was allegedly created to sell a painting in the year 2012. Plaintiff's biography in the EAI eBay ad that appeared on the internet on the WorthPoint's website was roughly 420 words. The word count for my entire biography is roughly 1360 words. Moreover, 1) EAI has failed to substantiate their claims that their computer server created the alteration and truncation of Plaintiff's biography with any tangible evidence. 2) Secondly and most important, the use and application of my biography as the designated artist is incorrect, false. 3) Plaintiff's biography was unethically and not authorized to be obtained whether it was from the Plaintiff's own personal website or from the website of askART.com. AskART prohibits any third party to "re create" or use any content on their site without written permission. 4) EAI has failed to identify the person who did paint the oil, Man With Red Umbrella. As a totality, it is precisely this unauthorized and incorrect conversion that constitutes fraud. Last, the Defendants demonstrated a false sense of entitlement simply due to the fact that my biography was listed on askART and Mr. Novocin has been a member of askART since 2001. Again askART does not permit any party to copy or transfer the information on their website.

## **A. FIVE ELEMENTS OF FRAUD RELATED TO ESTATE AUCTIONS INC .**

**1. Misrepresentation—** EAI's false references to the Plaintiff as the artist of the 1972 oil painting—ie caused a photo that inferred the Plaintiff initial and last name to have a fraudulent copyright management information (CMI) on the WorthPoint website. The false attribution by EAI is one of the root causes of this lawsuit. To remove the fake ad, Plaintiff followed the instructions from Defendants Plaintiff made the effort to contact to inform EAI that I was not the artist and was told to hire an attorney. Despite hiring an attorney, EAI ignored any settlement opportunities. The inability to produce EAI's own records, receipts and computer data that the Plaintiff requested is proof that their information and directions misrepresented the Plaintiff and used my personal information to sell the fraudulent 1972 oil painting. EAI's denial of liability after Plaintiff produced my childhood signature and EAI produce a misspelling of a signature in red on the 1972 eBay sale is a direct false misrepresentation to the Plaintiff who is reliant upon Defendants for said information. Plaintiff during litigation requested the red signature in 2019. Doc. 22 April 24, 2019.

**2) Knowledge of the material falsity -** Since August 2017 Plaintiff has consistently pursued both Defendants, particularly EAI by reporting and requesting information and photos for the listing of 1972 oil painting and to find out and confirm who was the eBay seller. Defendants admit they do not have had photos of the painting. The proof to the red signature is an example of willful recklessness misrepresentation. by EAI On Jan. 10, 2017 I directly informed Mr and Mrs Novocin that I was Not the artist and followed their instructions hired an attorney, EAI's failure to respond or produce evidence in a timely manner reveals a pattern to conceal the material evidence.



**3) Inducing the other party to rely upon it.** In 2012 the defendants misrepresented and misdirecting Plaintiff audience Plaintiff never failed to investigate the truth of the defendant's statements. Plaintiff was reliant upon EAI for any photos or to see the signature in red. In April 2022 Plaintiff saw for the first time since 2015 a photo of the painting. This tool over seven years. This painting still has a similar version of the Plaintiff name on the stretcher. Plaintiff followed through iverbal contact consistently and in writing to no avail. Plaintiff was reliant upon the Defendants documented communication to eventually see and prove that there was painting Plaintiff is still reliant on EAI to set forth known evidence that should be in EAI;s possession. The Defendants absence of evidence and verified proof constitutes an intentional and willful motive to deceive.

**4) Justifiable reliance of the other party** The Defendants long term failure to produce receipts or any photos from the original eBay ad for the 1972 painting keeps the Plaintiff reliant on EAI and is subject to their production. Plaintiff's actions in commencing this lawsuit was in pursuit of seeking Declaratory Relief. The Defendant s Declaration willfully intended to declare fraudulent statements and to Post a Bond for twenty thousand dollars. The Court and the Plaintiff are reliant upon the Declaration by to determine this case. Defendants documented distortion of Plaintiff' biography and created confusion and duly circulated on the internet for almost several years false information. Plaintiff reliant upon EAI to produce the information EAI created for the false listing of the 1972 Oil Painting Man With Red Umbrella.

**5) Injuries and Damages.** The Defendants False signature A. Trombetta is a significant causation for this lawsuit. The causation of Plaintiff's losses are numerous. In 2015, at a time of great expansion and artistic opportunities, commissions, articles and sales— and fully immersed in advancing my career, Plaintiff was forced to deal with a destructive and fake internet post. In 2015, Plaintiff lost the sale of an \$8500 oil painting, the opportunity for gallery representation due to the false posting and association with eBay, Estate Auctions 's 99 cents auctions and WorthPoint Corporation. Plaintiff has well over lost seven years of my life to fight false claims which are still ongoing. Plaintiff is requesting Permanent Injunctive Relief to prohibit the Defendants from using the Plaintiff's name and exhibits filed and submitted for the purposes of this lawsuit or any other images or texts that are circulating on the internet. The Plaintiff's causation of loss generated by this litigation, repeats the same harmful patterns and makes the Plaintiff a consistent victim to the Defendants' fraudulent claims in order to satisfy the Defendants deceptive fraudulent assertions. The loss my time, and all and any related of sales of artwork, the loss of my professional credibility and the time dedicated to this lawsuit is beyond profession and emotional measure and beyond rehabilitation.

## **Elements of Intentional Infliction of Emotional Distress**

The tort of intentional infliction of emotional distress has four elements: (1) the defendant must act intentionally or recklessly; (2) the defendant's conduct must be extreme and outrageous; and (3) the conduct must be the cause (4) of severe emotional distress.

## **TORT CLAIM FIRST COUNT NEGLIGENCE**

Negligence is a civil tort which occurs when a person breaches his duty of care which he



owed to another due to which that other person suffers some harm or undergoes some legal injury. Negligence can be explained as the failure of discharge or the omission to do something due to careless behavior. First Count of Tort Negligence According to CPLR 213(2) the statutes of limitation in New York for civil tort is six years in writing or an oral contract. The four elements of Tort are Duty, Breach, Causation and Harm.

### **Plaintiff's Claim for Civil Tort under the Six Year Statue of Limitations**

Plaintiff for the first time, in early Jan. 2017 Plaintiff discussed and decided to have a colleague contact EAI regarding any information the regarding 1972 Original Oil painting. due to the reposting of the link on WorthPoint's website. A brief chat and Ms. Novocin's suggested to send an email ended my colleagues involvement in this matter. On Jan. 10, 2017, Plaintiff phoned and spoke with Marie Novocin. I identified myself and informed Mrs. Novocin that I was not the artist who painted the oil they had sold on eBay. I then asked if EAI had any information as if EAI had anything to do with the reposting on the internet. Plaintiff also asked for the owner's contact information. Again I informed Mrs. Novocin why I was contacting her as internet listing for the 1972 Original Oil Painting was under the Plaintiff's name again on the internet.

Shortly after, Plaintiff received a phone call from Norb Novocin. His intent was to inform me that he had a wealth of no knowledge. As Plaintiff has documented, I confirmed to Mr. Novocin that I was not the artist. I attempted to inform Mr. Novocin it is not legal as the Visual Artist's Rights Act attests to attribute an artist's name to a painting they did not create. The call ended with his suggestion to get a lawyer. Since Jan. 2017, Plaintiff has taken all the steps to responsibly inform the Defendants about their infringing actions. The NY rules for Tort state : a rule in tort law: the statute of limitations for a cause of action does not begin to run until the time that the injured party discovers or reasonably should have discovered the injury. As stated on Jan. 10, 2017 Plaintiff for the first time confirmed by phone that Mr. Novocin sold a painting in 2012. On Sept. 21, 2022 Mr. Novocin claims that "To this day I have never been to Plaintiff's website."

Novocin statement demonstrates a failure to act and demonstrates careless action regarding researching Plaintiff credential prior to Mr. Novocin's false attribution. It is since Sept. 21, 2022 that Plaintiff became aware of this point of ONE reference and the lack of references that Mr. Novocin used prior to his incorrect attribution. Plaintiff set forth a claim for Negligent tort due to the failure of both Defendants to act, in a responsible manner toward researching the Plaintiff credentials and for not contacting the Plaintiff. Defendants have demonstrated careless actions as aforementioned. There are so many failures by Defendants to produce any evidence that supports claims that they did not truncate or alter Plaintiff's biography. TheEAI ad created by the Novocins does infer my website.

EAI Defendants had a duty to the Plaintiff as well as the buyer to correctly attribute the 1972 Oil Painting to the actual artist. To date, EAI has failed to do that. As this case attests, EAI has breached three claims, not significant are the VARA and copyright claims. Defendants have without authorization and accuracy used Plaintiff personal property via my biography and as aforementioned caused Plaintiff the loss of sales of art, gallerists who were interested in my work, aside from the enormous loss of time and career opportunities all tainted and blocked by the causation of the false attribution and at present the rigorous responsibilities in litigation that the Plaintiff is having difficulty in managing such strenuous and unending demands. Plaintiff did not cause the infringements and was patient, careful, responsible and respectful with each Defendant prior to filing this lawsuit against EAI and in deciding to Amend my Complaint to add WorthPoint. A)As an immediate and initial reaction to the 2015 false internet posting and the second re posting found by the Plaintiff months after it was allegedly permanently removed, Plaintiff needed to return back to physical therapy and had regular doctor appointments with my Pain Management Specialist Plaintiff Evidence

B) Plaintiff was experiencing substantial anxiety and fear due to the loss of income and the sale of artwork to a prominent collector due to the Defendant falsities. Plaintiff was unable to sleep at night and suffered functional deficits during the day as well as physical manifestations of emotional distress due to the nine month ordeal to remove the false posting from the internet.

C) Prior to and throughout litigation, Plaintiff has had to divert time away from career opportunities and financial advancements to seek legal remedies and Declaratory Relief to protect and prevent further infringements and willful misattributions from both Defendants. As a result the quality of my life, earning potential, professional and personal responsibilities has been unnecessarily blocked due to the willful denial by the Defendants to resolve this lawsuit. Plaintiff has suffered simply due to the fact that I did not paint this oil and that I want to legally disassociate from the counterfeit oil painting. I have suffered a great loss of time to declare and legally document I am not the artist.

### **TORT CLAIM SECOND COUNT NEGLIGENCE**

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

On Feb. 1, 2022 at the request of WorthPoint’s attorneys Plaintiff was requested to write a settlement letter. Attorney Anderson Duff duly communicated that his clients were in held up in Bankruptcy Court due to this litigation. Despite being advised to engaged or discuss settlement offers prior to litigation by friends and retired attorneys, Plaintiff did agree to writing a letter. As is Plaintiff;s way I responsibly found out what needed to be included in the Settlement letter. I gave a recap of all my actions to both Defendants . I found cases related to my claims and listed all the damages and rules pertaining to my claims. The letter was quite long as this has been going on for over seven years. Plaintiff wrote out in words the amount Plaintiff was seeking for my settlement offer. Plaintiff did not hear from a any of the attorneys. At the same time Plaintiff was experiencing for the first time ever Vertigo. At the same time due to the stress of interviewing lawyers for possible representation, Plaintiff in addition to the recent Vertigo developed a sty and swollen eye, As a result of the stress from litigation, and the sudden onset of Vertigo, Plaintiff fell and fractured a rib due to this lawsuit and all the unexpected sudden demands that were imposed upon me. I ask the Court to consider the time Plaintiff has lost just to avoid litigation and to have the false listing permanently removed from the internet. Secondly, I simply did not do this painting and followed the advise of my legal colleague to declare I am not the artist for future documentation and records. Third the major denials

of any wrongdoing and infringements in concert with the minor settlement offers by EAI have prompted the Plaintiff to be vigilant in protecting my name and my rights. Plaintiff did not cause these infringement, nor did I immediately file a lawsuit.

**EXHIBIT #1 Doctor appointment with Benjamin Tweel for Vertigo**

**EXHIBIT #2 Emergency Eye Infirmary Visit Sunday Feb. 20, 2022**

**EXHIBIT #3 Doctor 's Letter and Visit with Benjamin Zaremski Vertigo and fractured rub**

As a result this sudden intense bombardment of demands despite honoring my agreement by responsibly writing a letter, none of the Defendants attorneys contacted me regarding my letter. Instead, the attorneys wrote a letter to the Court and falsely stated that Plaintiff did not state a monetary amount, when in truth, Plaintiff most certainly did. The reliance Plaintiff had on the Defendants to be responsive and communicative with the Pro Se Plaintiff was not experienced. Plaintiff did conduct a Meet and Confer as well as emailed the Defendant regarding my eye condition. I did communicate my sudden medical limitations to all the attorneys. The actions of the attorneys falsely conveyed to the Court that I was disrespectful to the laws and rules that I had agreed to producing. Plaintiff notes that this is an assault on my character and that misleading and misinforming the Court was intentional. This problem could have been avoided through simple communication from the Defendants. As aforementioned Plaintiff was experiencing sudden health issues that needed immediate attention. Plaintiff was then order to write another . Settlement letter and was indeed concerned due to threat of sanctions, When your intentions are honorable and responsible, when they are perceived as anything less, injury occurred for the Plaintiff.

Despite failed settlement attempts on Plaintiff during the most recent Nov. 23, 2022 Conference Call, Plaintiff brought up the subject of settlement discussion. Attorney Anderson Duff immediately rejected any possibilities for any discussions to take place. Immediately, following the Conference Call Attorney Anderson Duff emailed Plaintiff with the Subject matter Increased Attorneys Fees.

*"I am again writing to remind you that my clients will be seeking an award of attorneys' fees under § 505 of the Copyright Act and/or because you rejected my clients' offer of judgment."* Plaintiff reminds the Court that the sum of both of EAI's settlement offers combined equal an amount to be less than three numbers. The willful refusal of the EAI Defendants and their attorney to deny any

settlement discussions while concurrently sending emails to the Plaintiff taunting and informing me that they are seeking an award for attorneys fees constitutes emotional distress. I am not the artist who painted the 1972 oil nor should my biography been used to sell this painting. Plaintiff reminds the Court that in Feb. and March 2022 I wrote not one but two letters fo a settlement which both Defendants rejected.

**EXHIBIT #4 Nov. 23, 2022 Email Subject Increased Attorney's Fees from Anderson Duff**

## CLAIM FOR RELIEF

1. Plaintiff consistently informed EAI and Marie and Norb Novocin .that I did not paint the 1972 Original Oil Painting Man With Red Umbrellas that falsely attributed my biography and signature to be falsely attributed to the aforementioned oil painting.
2. Plaintiff consistently informed EAI Norb and Marie Novocin and there attorney I was nine years old , did not paint in oils then and I too small to paint an oil four feet in height.
3. The Defendant's communication to the Plaintiff resulted in Mr. Novocin's suggestion to hire an attorney . Defendant's used to Plaintiff ;s biography to exploit the Plaintiff notoriety to increase the value of a damaged painting.
3. As stated above , there was never any business relationship and own prior contact between the Plaintiff and the Defendants.
4. At no time did Plaintiff verbally of ever signed or authorize EAI or the Novocin's to use or purport that I painting in oils at nine years old.
5. Defendants willfully stated in the guise of evidence during the Novocin Deposition and now claim that my entire biography was allegedly in the eBay ad for 1972 oi painting Man With Red Umbrella
- 6 Hence, the Defendants willfully and intentionally violated the Plaintiff's exclusive copyright to my self-authored artistically expressed biography. The Defendants exhibit a pattern of repeated activity to willfully denying any liability in misattribution Plaintiff to 1972 ad on the internet under Plaintiff's name that is the proximate cause of the individual's harm.
- 7 . In summary no one has the right to alter, change or expose to the public, a false signature or rewrite the chronological facts of my life. No other source can falsely claim a copyright or falsely claim a licensing agreement when no proof of documents of proof to verify such

claims exist. This is the root cause for commencing this lawsuit.

8. My case validates the inequitable and adverse effect that one false attribution during an artist's lifetime can "BLOCK and IMPEDE" an artist's professional progress and hinder one's status.
9. This lawsuit brings attention to the realization that any "source" can write, state or claim a false attribution or use an artist's name on a work of art— ( or what is ascribing to be art). A great deal of time and many opportunities were lost to refute the false 1972 misattribution, a causal loss that has harmed my integrity, caused me to lose my time, earn a living and blocked my ability to create my own new works of art.
10. The Discovery evidence and the lack of evidence has continued consume the Plaintiff life, while imposing unending demands upon someone who has been victimized and embarrassed by public identity theft. The misuse my name with malicious intent by the Defendants to burden an artist, who is not a lawyer is overwhelming. The question needs to be considered, how can the Defendants afford a lawyer when the Defendants refused my settlement offer back in 2017.

### **SUMMARY OF ARGUMENT**

Plaintiff nine Counts of Fraud are detailed while defining the circumstances and false misrepresentation and the causal losses and harm all of the Defendants fraudulently actions have had on the Plaintiff. The countless mistakes by EAI, can be literally be "counted" as multiple Counts of Fraud defined in Plaintiff's Proposed Amended Complaint. The unending problems, delays demonstrated and implemented by Estate Auctions Inc and Norb and Marie Novocin have been a burden for many years. Plaintiff has been a victim to EAI's bumbling business practices. In litigation of I have been a victim to EAI chicanery and attempts to inflict both emotional distress and to inflict the financial debt for Mr. Duff's legal fees upon the Plaintiff.

As a Pro Se Litigant, Plaintiff asks the Court to grant my Proposed Amended Complaint to includes applicable request to include FRCP Fraud 9(b), Intentional Infliction of Emotion Distress and Tort.

Defendants will not suffer undue prejudice from the filing of Plaintiff's Proposed

Amended Complaint because **1)** the fraudulent allegations asserted in the Proposed Amended Complaint are more specific and conclusive than that asserted in the Original or Operative Amended Complaints **2)** both Defendants alleged harm to the Plaintiff from the Original and Amended Complaint has **increased** with the new evidence **3)** the more-specific fraudulent definition is being asserted before the close of the Discovery and within the time frame to amend pleadings set out in the modified Scheduling Order **4)** Both Defendants' discovery has only been through admissions, production of documents and interrogatories and depositions **5)** the newly-alleged facts and evidence in Plaintiff's Motion of my Proposed Amended Complaint are already well-known to the Defendants and in their possession. For these reasons, Plaintiffs respectfully ask that the Court grant Plaintiff's Motion for Leave to File the Proposed Amended Complaint to Include for Permanent Injunction and Other Equitable Relief.

WHEREFORE, Plaintiff, on behalf of herself and others artists who have been victimized by WorthPoint Corporation, respectfully request that this Court grant Plaintiff's Proposed Amended Complaint to proceed forward to include Fraud, Intentional Infliction of Emotional Distress and Permanent Injunctive Relief and grant Plaintiffs such further relief as this Court deems just and proper.

Dated: December 19, 2022

Annamarie Trombetta  
175 East 96th Street  
New York, New York 10128

Respectfully Submitted,

——Electronic Signature——

/s/ Annamarie Trombetta

Pro Se Litigant

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Annamarie Trombetta